

**Before the  
Federal Communications Commission  
Washington, DC**

In the Matter of	)	
	)	
Request for Review of the Decision of the	)	
Universal Service Administrator or Waiver by	)	
	)	
Los Lunas School District	)	File No. SLD-
Los Lunas, New Mexico	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**REQUEST FOR REVIEW OR WAIVER**

Los Lunas School District (“District”), by its undersigned representative, hereby requests that the Commission review and reverse the Decision on Appeal of the Universal Service Administrator (“USAC”) in the above referenced matter, dated July 27, 2010 (Exhibit A), finding that the appeal was postmarked more than 60 days after the date the Form 486 Notification Letter was issued.

The District did timely appeal from a BEAR denial which resulted from a service start date error contained on the District’s Form 486. The District erroneously entered the service start date on the Form 486, as the submission date of the form. This error was not evident until the District submitted a BEAR (USAC Invoice ID # 1304298) for Funding Request Number 1741284 which was denied for services being delivered prior to the service start date on the Form 486. The District respectfully requests that this appeal be considered as timely filed within the 60 day window and that the District be allowed to correct the Form 486 service start date error.

## **I. ISSUE**

The District erroneously entered the filing date as the service start date on the Form 486 Number 585803. As a result of this error, a number of District FRNs now reflect a service start date of March 30, 2009 instead of July 1, 2008. Due to the incorrect service start date, the above mentioned BEAR was denied. A copy of the Form 486 Notification Letter is attached to this appeal as Exhibit B as well as a copy of the BEAR Notification Letter, labeled Exhibit C.

## **II. FACTS**

On March 3, 2009, the SLD approved funding for Los Lunas School District's Form 471 Application #619387. On the application, the reported service start date for all the Priority One services requested was July 1, 2008. Once the Funding Commitment Decision was received, the District then timely submitted its Form 486 on March 30, 2009. The District erroneously used the submission date of the Form 486 as the service start date, instead of the date services actually began. Subsequently, the District submitted a BEAR for payment on this FRN and it was denied by the SLD due to the error on the Form 486. The District had a number of FRNs affected by this Form 486 clerical error.

## **III. DISCUSSION**

### **A. The SLD should have seen and questioned the service start date error.**

The SLD issued the Form 486 Notification Letter on July 8, 2009. The Notification Letter lists the service start date as March 30, 2009, the date the District submitted the Form 486. At the issuance of the Form 486 Notification Letter the SLD should have immediately seen and questioned the date error, particularly since the Form 471 and Funding Commitment Decisions Letter both correctly list July 1, 2008 as the service start date. Had the SLD questioned the service start date on the Form 486, the District would have had an opportunity to correct the error and would have not been denied payment on the BEAR submitted. But for this clerical error, the District has received and paid for eligible services that have been funded and approved by the SLD.

There has not been any indication that the District created any kind of waste, fraud or abuse upon the program.

**B. Correcting the service start date error follows previously established FCC precedent.**

The Federal Communications Commission (FCC) has clearly established that applicants making unintentional clerical errors regarding the reported service start date on the Form 486 should be provided with an opportunity to correct those errors. In the *Harvey Public Library District Order*, the applicant used the date the service provider had finished work as start date on its Form 486 instead of the actual service start date. The FCC found that had the applicant reported the correct date, all program rules would have been followed. Further, the Commission emphasized that although the applicant committed an “unintentional, clerical error when it listed the incorrect service start date on its FCC 486, it adhered to the other core program requirements.”<sup>1</sup> The Commission has repeatedly stressed the complicated nature of the E-rate program resulting in a high number of ministerial errors such as these, which do not result in waste, fraud or abuse.

Just as in the *Harvey Public Library District Order*, the clerical mistake made by Los Lunas School District on the Form 486, and subsequent denial of the BEAR, did not result in the District being out of compliance in regards to fundamental E-rate rules and guidelines. As a matter of fact these types of clerical errors are of the kind that another FCC order, *Bishop Perry*, was designed to protect. The District now understands that the service start date on the Form 486 is not the date in which the Form is submitted but rather the date that services are to begin. The District respectfully argues that the FCC has granted waivers based on clerical and ministerial deviations such as this resulting in procedural errors which do not violate any E-rate program rules, as is the case here.

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<sup>1</sup> *Request for Review and/or Waiver by Harvey Public Library District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-307716, CC Docket No. 02-6, Order, DA 08-2365 (Wireline Comp. Bur. 2008), para.5.

Another FCC Order on point with the case at hand is the *Glendale Unified School District Order (Glendale Order)*. In the *Glendale Order*, the Commission ruled that although the applicant had committed an unintentional clerical error when it listed the incorrect service start date on its Form 486, it adhered to the core program requirements.<sup>2</sup> The Commission notes that while strict adherence to processing standards are necessary for the efficacious administration of the program, there are circumstances where such adherence would conflict with the statutory goals mandated by Congress in furtherance of advancing universal service to schools and libraries in most need of support.

As is the case for many district applicants across the country, Los Lunas is facing budgetary constraints. A loss of funding would result in a financial hardship for the District. Los Lunas School District requests an opportunity to submit a revised Form 486 at this time so that the District can seek reimbursement for the eligible services that have been delivered and paid for in regards to all of the FRNs located on the Form 486 at issue.

**C. Waiver of the Commission's rules is warranted in these circumstances**

If the Commission agrees with USAC that the District is not entitled to correct the service start date for the funding requests on the above mentioned Form 486, then the District respectfully requests that the rule be waived. The Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In deciding whether to waive a rule, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In these circumstances, waiver is warranted, necessary, and especially appropriate.

Waiver is also warranted here because the failure to receive the amount of money committed to the District for these funding requests will cause the District economic

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<sup>2</sup> *Request for Review and/or Waiver by Glendale Unified School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-143548, CC Docket No. 02-6, Order, 21 FCC Rcd 1040 (Wireline Comp. Bur. 2006), para.5

hardship. The State of New Mexico is experiencing a record budget shortfall this year and, because of that, many school districts throughout the state, including the District, which serves an economically disadvantaged population, are not receiving the monies they anticipated from the state. Loss of funding from the Universal Service Fund combined with decreased state funding will adversely affect the District's technology resources, and the District will be forced to make very difficult decisions as to which programs it can no longer afford to fund.

Financially penalizing schools and libraries for procedural gaffes is counterproductive and antithetical to the ultimate goals of the E-rate program. The *Bishop Perry Order* specifies that the denial of funding requests inflicts undue hardship on an applicant whose clerical/ministerial error was procedural rather than substantive and where there is no evidence of waste fraud or abuse.<sup>3</sup> Furthermore, the Order clearly asserts that rigid adherence to application procedures does not further the purpose of the E-rate program, nor serve the public interest.<sup>4</sup> The clerical error committed by the District on its Form 486 was inadvertent, not unreasonable and, most certainly, does not constitute waste, fraud or abuse. Moreover, the clerical error does not result in the District receiving more funding than it requested. To deny funding to the District in these circumstances would result in exactly the kind of financial and educational hardship that the *Bishop Perry Order* was designed to prevent. For these and all of the other reasons previously discussed, a waiver of the rules is warranted.

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<sup>3</sup> See *Bishop Perry Order* at 5321, para. 11.

<sup>4</sup> *Ibid.*

#### IV. CONCLUSION

Accordingly, Los Lunas School District respectfully requests that the District be allowed to resubmit or correct the Form 486 to reflect the correct service start date of July 1, 2008 for all of the funding requests originally included on that form.

Respectfully,

A handwritten signature in cursive script that reads "Terry Othick". The signature is written in dark ink and is positioned above the printed contact information.

Terry Othick  
Director of Technology  
Los Lunas School District  
PO Drawer 1300  
Los Lunas, NM 87031  
Phone: (505) 975-8774  
Fax: (505) 865-7766  
E-mail: tothick@llschools.net

# Exhibit A



**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2008-2009**

July 27, 2010

Terry Othick  
Los Lunas School District  
119 Luna Ave  
PO Drawer 1300  
Los Lunas, NM 87031

Re: Applicant Name:	LOS LUNAS SCHOOL DISTRICT
Billed Entity Number:	143243
Form 471 Application Number:	619387
Funding Request Number(s):	1741284
Decision Letter Date:	July 08, 2009
Date Appeal Postmarked:	July 15, 2010
Your Correspondence Dated:	July 14, 2010

Our records show that your appeal was postmarked more than 60 days after the date your Form 486 Notification Letter was issued, as shown above. Federal Communications Commission (FCC) rules require applicants to postmark appeals within 60 days of the date on the decision letter being appealed. FCC rules do not permit the Universal Service Administrative Company (USAC) to consider your appeal.

If you believe there is a basis for further examination of your application, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

Schools and Libraries Division  
Universal Service Administrative Company

# Exhibit B



RECEIVED

JUL 15 2009

Schools and Libraries Division

FINANCE

**FORM 486 NOTIFICATION LETTER**  
**(Funding Year 2008: 07/01/2008 - 06/30/2009)**

RECEIVED

July 8, 2009

JUL 15 2009

Mario Guggino  
LOS LUNAS SCHOOL DISTRICT  
119 LUNA AVE  
LOS LUNAS, NM 87031

SUPERINTENDENT'S OFFICE

**Re: Form 486 Application Number: 585803**  
**Applicant's Form 486 Identifier: LLS\_62609c**

This letter is to notify you that the Universal Service Administrative Company (USAC) has received and accepted an FCC Form 486, Receipt of Service Confirmation Form, from you. This notification is to confirm the information that you provided. This information is being shared with the service provider whose SPIN you identified on each Funding Request Number (FRN).

You may be receiving this letter to revise or correct a previous Form 486 Notification Letter. The information contained in this letter supersedes any previous notification you may have received, including, but not limited to, a previously adjusted Service Start Date or previously reduced funding commitment.

**NEXT STEPS**

Discuss with your service provider whether you would like discounts on your bills or to pay your bills in full and be reimbursed for discounts.

Invoice USAC before the invoice deadline using the applicant invoice (BEAR Form - FCC Form 472) for reimbursements after paying the bills in full or the service provider invoice (SPI Form - FCC Form 474) for discounts. Whichever method you choose, you must pay your non-discount portion, as stated in Program rules. Program rules also require that participants maintain all documentation for at least five years after delivery of discount service.

**TO APPEAL THE SERVICE START DATE/FUNDING COMMITMENT CHANGE DECISION**

If you wish to appeal the Service Start Date change(s) and/or funding commitment adjustment(s) indicated in this letter, your appeal must be received by USAC or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
  - appellant name,
  - applicant or service provider name, if different than appellant,
  - applicant BEN and service provider SPIN,
  - Form 486 Number 585803 and FRN(s) as assigned by USAC,
  - "Form 486 Notification Letter for Funding Year 2008", AND
  - the exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by the USAC s decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by the USAC s decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 South Jefferson Road  
P.O. Box 902  
Whippany, NJ 07981

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

A guide to the data reported in our letter reports is posted in the Reference Area of our website. Complete Program information, including invoice deadlines is also posted on our website. You may also contact our Client Service Bureau by email using the "Submit a Question" link on our website, toll-free by fax at 1-888-276-8736, or toll-free by phone at 1-888-203-8100.

Schools and Libraries Division  
Universal Service Administrative Company

FORM 486 NOTIFICATION LETTER REPORT  
(Funding Year 2008)

Funding Request Number: 1706897  
Form 471 Application Number: 619387  
Service Provider Name: Qwest Corporation  
Service Provider Identification Number: 143005231  
Billing Account Number: 505-D08-7019-019  
Service Start Date: 03/30/2009

Funding Request Number: 1707677  
Form 471 Application Number: 619387  
Service Provider Name: Qwest Corporation  
Service Provider Identification Number: 143005231  
Billing Account Number: 505-565-1257-317B  
Service Start Date: 03/30/2009

Funding Request Number: 1707703  
Form 471 Application Number: 619387  
Service Provider Name: Qwest Communications Company, LLC  
Service Provider Identification Number: 143001157  
Billing Account Number: 71334752  
Service Start Date: 03/30/2009

Funding Request Number: 1707750  
Form 471 Application Number: 619387  
Service Provider Name: Verizon Wireless  
Service Provider Identification Number: 143000677  
Billing Account Number: 563091646-00001  
Service Start Date: 03/30/2009

Funding Request Number: 1741284  
Form 471 Application Number: 619387  
Service Provider Name: Nextel of California Inc.  
Service Provider Identification Number: 143000891  
Billing Account Number: 154656029  
Service Start Date: 03/30/2009

FORM 486 NOTIFICATION LETTER REPORT  
(Funding Year 2008)

Funding Request Number: 1741370  
Form 471 Application Number: 619387  
Service Provider Name: Sprint Communications Co. L.P.  
Service Provider Identification Number: 143005695  
Billing Account Number: 0583237496-4  
Service Start Date: 03/30/2009

# Exhibit C



Schools and Libraries Division  
Correspondence Unit  
30 Lanidex Plaza West  
PO Box 685  
Parsippany, NJ 07054-0685

## **TIME SENSITIVE MATERIAL**

00321  
Mario Guggino  
LOS LUNAS SCHOOL DISTRICT  
119 LUNA AVE  
PO DRAWER 1300  
LOS LUNAS, NM 87031



Form 472 (BEAR) Notification Letter

May 28, 2010

Christina Halley  
Nextel of California Inc.  
12524 Sunrise Valley Drive - 1st Floor - VARESF0102-1844  
Reston, VA 20196-3438

Re: Invoice Number - as assigned by USAC: 1304298  
Service Provider Identification Number: 143000891  
Reimbursement Form Number: LL08-47201-NEXTEL  
Billed Entity Number: 143243

Mario Guggino  
LOS LUNAS SCHOOL DISTRICT  
119 LUNA AVE  
PO DRAWER 1300  
LOS LUNAS, NM 87031

Preferred Mode of Contact: E-mail at [mguggino@llschools.net](mailto:mguggino@llschools.net)  
Total Amount of Reimbursement Approved for Payment: \$0.00

This letter is your notification that the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has processed an FCC Form 472, "Billed Entity Applicant Reimbursement (BEAR)" Form from the above named applicant listing you as the service provider. USAC has committed to reimburse the discounted portion of the cost of eligible services provided to eligible entities pursuant to one or more FCC Forms 471, "Description of Services Ordered and Certification Form".

In certain instances, a line may not have been paid. Review the BEAR Letter Applicant Reimbursement Report (Report) following this letter for the reason(s) this may have occurred. For more information about lines that have not been paid, see the explanation of Invoice Error Codes in Step 9 on our website. Work with the applicant (your customer) to correct any errors. Once corrected, your customer may submit a new BEAR to request reimbursement for any unpaid lines.

We recommend using the BEAR Online tool from the Apply Online area or Required Forms section of our website for additional submissions. If a new BEAR cannot be submitted before the invoice deadline passes, you or your customer may submit a request for a deadline extension. (See "Invoice Deadlines and Extension Requests" posted in the SLD section of our website for more information.)

Pursuant to the Federal Communication Commission's (FCC) Second Report and Order and Further Notice of Proposed Rulemaking (FCC 03-101, released April 29, 2003), you must remit the amount shown as "Total Amount of Reimbursement Approved for Payment" above to your customer no later than 20 days after receipt of payment of the approved discounts from USAC. You also agreed not to tender or make use of the payment of the approved discounts issued by USAC to you prior to remitting the discount to your customer (See BEAR Form, Block 4, Service Provider Acknowledgment).

The USAC check should be mailed to the service provider named above within 20 days of the date of this letter.

BEAR NOTIFICATION LETTER APPLICANT REIMBURSEMENT REPORT

Form 471 Application Number: 619387  
Funding Request Number: 1741284  
Funding Year 2008: 07/01/2008 - 06/30/2009  
Contract Number: T  
Funding Commitment Decision: \$72459.68  
Reimbursement Amount for this FRN: \$0.00  
Reimbursement Request Decision Explanation:  
Billed Date Before 486 Service-Start Date;

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